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CLEARINGHOUSE RULE 98-079

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The treatment clause in SECTION 1 should read as follows: “Ins 6.59 (4) (a) and (as) are amended to read:”. Section Ins 6.61 (15) should be dealt with in a separate SECTION since it does not consecutively follow s. Ins 6.59 (4) (a) and (as). [See s. 1.04 (2) (a) 3., Manual.]

b. In s. Ins 6.59 (4) (a), the title of s. Ins 6.59 (4) should be shown in solid capital letters, that is, “PROCEDURE.” [See s. 1.05 (2) (c) and (3) (d), Manual.] Also, the titles of s. Ins 6.59 (4) (a) and (as) should be shown with an initial capital letter and underscored, rather than with italics. [See s. 1.05 (2) (d), Manual.]

c. In s. Ins 6.61 (15), the title of s. Ins 6.61, that is, “Intermediary records,” should not be shown. [See s. 1.05 (3) (d), Manual.] Also, the revised title of s. Ins 6.61 (15) should not be shown with underscoring because the title to a section or a lower subunit should be amended by showing the title as it would appear, without strike-throughs or underscores. [See s. 1.05 (3) (c), Manual.] In addition, the notation “(title)” should be included in the treatment clause to notify the reader that the title has been amended. [See s. 1.05 (3) (a), Manual.] Also, the phrase “name business” should be replaced by the phrase “business name.”

d. A title should be included in s. Ins 26.05 (5) since all of the other subsections in s. Ins 26.05 currently have titles. [See s. 1.05 (1), Manual.] The text of s. Ins 26.05 (5) should not be underscored because the introductory clause indicates that the subsection is being created.

e. In s. Ins 26.05 (5), the phrase “Certificates of Prelicensing Education” should not be capitalized. [See s. 1.01 (4) (a), Manual.] This comment also applies to s. Ins 26.07 (2).

In addition, as a general comment, the appendices to ch. Ins 26 use inappropriate capitalization in many places. (See, e.g., Appendix 1, Section A. I. E., which inappropriately capitalizes the phrase “Insurance Companies.”) Moreover, there typically is an inconsistency with inserted material often being capitalized while existing material is uncapitalized. All of these appendices should be carefully reviewed for inappropriate capitalization.

f. In s. Ins 26.07 (2), “~~ten~~ five days” should be changed to “~~ten~~ 5 days” in order to use numerals. [See s. 1.01 (5), Manual.]

g. In all of the appendices to ch. Ins 26, “SECTION A” and “SECTION B” should not be underscored since they are not being amended.

h. In Appendix 1, Section A. I.; Appendix 2, Section A. I.; Appendix 3, Section A. II.; and Appendix 4, Section A. I, “~~FJ~~.” should be changed to “~~J~~ E” since the language to be removed should be stricken-through and the new underscored material should immediately follow the stricken material. Also, in Appendix 2, Section B. IV. new A., the old numbers 4. to 10., should first be stricken-through, with the new underscored number immediately following the number that is stricken-through. [See s. 1.06 (1), Manual.] A similar problem exists throughout the appendices.

i. In Appendix 1, Section A. II. J., the phrase “Home/telephone” should be changed to “Home and telephone” in order to avoid using slashed alternatives. [See s. 1.01 (9) (a), Manual.] This comment also applies to Appendix 2, Section A. II. J.; Appendix 3, Section A. II. J.; and Appendix 4, Section A. II. J.

j. In Appendix 1, Section B. IV., current item B. is changed to item A., current item C. is changed to item B. and current item A. is changed to item C. In order to accomplish this, the previous item numbers are not only shown as stricken-through and the new item numbers as underscored, but the text of these items has been moved. A similar approach is used for many other parts of this and other appendices. Because this is material in an appendix rather than in the text of an administrative rule, it is difficult to indicate that these provisions have been renumbered. However, it seems more appropriate to follow drafting protocol and leave the text in the sequence in which it currently appears while showing the changes in numbering. [See s. 1.04 (2) (c), Manual.] As an alternative, because there are so many changes to Appendices 1 to 4, it may be more appropriate to repeal and recreate these appendices so that the text is shown as it will appear.

k. In Appendix 1, Section B. IV. new C. new 1. old c., part of the word “Underinsured” is shown as both stricken-through and underscored. The underscoring should be eliminated.

l. In Appendix 1, Section B. IV. new C. new 2., the new underscored material should immediately follow the material that is stricken-through, rather than preceding it. [See s. 1.06 (1), Manual.]

m. In Appendix 2, Section B. IV. new A. old 3., the subdivisions are both underscored and stricken-through. They should be one or the other, not both.

n. In Appendix 2, Section B. IV. new A, the old numbers 11. to 25. should be completely stricken-through, with the new underscored number immediately following, for example, “~~12.~~ 11.”, rather than “112.”

3. Conflict With or Duplication of Existing Rules

a. Section Ins 6.59 (4) (a) eliminates the requirement that an application for an agent license include an original certificate of prelicensing education if an exemption form required in ch. Ins 26 is not submitted. This is inconsistent with s. Ins 26.04 (1) which continues to require that a certificate of preliminary education be submitted with the application. This inconsistency should be eliminated.

b. The initial applicability provision in SECTION 7 indicates that the rule applies to an applicant who seeks a license or is tested for a license after January 1, 1999. However, it appears that this initial applicability provision should not apply to all provisions in the rule-making order. For example, if the intent is to have the requirement in s. Ins 6.61 (15) regarding notification to the Office of Commissioner of Insurance (OCI) of a change in name apply to all intermediaries, including intermediaries who were licensed before January 1, 1999, then there should be no initial applicability date which affects this particular provision. The initial applicability provision should be carefully crafted to refer to the appropriate provisions in the rule-making order, not the order as a whole unless that is the intent.

Also, is it the intent to have all individuals who apply for a license or who are tested for a license after January 1, 1999, take courses which fulfill the requirements set forth in the revised Appendices 1 to 4 of ch. Ins 26? If so, this would appear to conflict with s. Ins 26.05 (2) which requires that accredited institutions of higher education submit an application form for course approval to OCI and that, if granted, course approval expires on August 30 of odd-numbered years. It appears that the initial applicability provision should address when accredited institutions are required to submit applications for revised course approval, rather than having the initial applicability provision apply to applicants or individuals who are tested for a license on or after January 1, 1999.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The notice of submittal and the notice of rule-making hearing should indicate that there will be changes in ch. Ins 26, rather than “s. Ins 26.” In addition, there should be a reference to changes in ch. Ins 6.

b. In the introductory clause of the order, the reference to Appendices 1, 2, 3, 4 and 6 should specify that they are appendices of ch. Ins 26. This comment also applies to the treatment clause in SECTION 6.

c. In the third bullet point in the analysis, the reference to “form DJ-LG-250” should be changed to “form DJ-LE-250.”

d. Section Ins 6.59 (4) (a) refers to “an original exemption form as required in ch. Ins 26 (if required).” It would be helpful if a more specific reference to the latter requirement were specified, for example, by referring to “an original exemption form ~~as required in~~ under ch. Ins 26, if required by s. Ins 26.04 (3).”

e. The effective date provision provides that the rule will take effect on January 1, 1999, as provided in s. 227.22 (2) (intro.), Stats. However, the reference should be to s. 227.22 (2) (b), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Because s. Ins 6.59 (4) (a) refers to “an original certificate of preclicensing education,” the first bullet point in the analysis should be changed to refer to this, rather than to “an original certificate of preclicensing *data*” (emphasis added).

b. Section Ins 6.59 (4) (a) specifies the application process for resident intermediary agents and adds a requirement for submission of “an original letter of clearance, if previously licensed in another state.” Presumably this would apply to anyone who had been licensed in another state, regardless of whether the individual is or is not a current resident of Wisconsin. However, the second bullet point in the analysis indicates that an original letter of clearance must be submitted for nonresident applicants. Either the rule or the analysis should be changed to eliminate this inconsistency.

c. The third bullet point in the analysis indicates that a particular form must be “submitted not more than 180 days prior to the submission of an application rather than the original requirement of 90 days prior to the test date.” This is inconsistent with s. Ins 6.59 (4) (a) which indicates that that form must be dated not more than 180 days prior to the *test date*. Either the rule or the analysis should be changed to eliminate this discrepancy, for example, either by specifying in the analysis that this change applies only to applications for a reinsurance intermediary broker or manager license (which is addressed in s. Ins 6.59 (4) (as)) or by changing s. Ins 6.59 (4) (a) to make it consistent with the analysis.

d. The fourth bullet point in the analysis also should indicate that the rule eliminates the requirement that OCI be notified of a change in business address.

e. In the fourth and fifth bullet points in the analysis, the introductory words “mandates” and “requires” should be changed to “mandate” and “require,” respectively.

f. A comma should be inserted at the end of the fifth bullet point in the analysis.

g. The fifth bullet point in the analysis uses the word “non-credit” whereas the sixth bullet point uses the word “noncredit.” The inconsistency in hyphenation should be eliminated.

h. In the seventh bullet point in the analysis, the comma should precede, rather than follow, the word “and.”

i. Because of the repeal of s. Ins 26.06 (2) (b) 4., s. Ins 26.06 (2) (b) 2. also should be amended to insert the conjunction “or” at the end to explain the relationship between s. Ins 26.06 (2) (b) 1., 2. and 3.

j. In the treatment clauses of SECTIONS 3 and 4, a period should be inserted following the subdivision number. Also, a period should be inserted at the end of SECTION 4.

k. In Appendix 1, Section A. II. D., the phrase “including change of address” should be changed to “including change of name or address.” This comment also applies to Appendix 2, Section A. II. D.; Appendix 3, Section A. II. D.; and Appendix 4, Section A. II. D.

l. In Appendix 1, Section A. II. N. 11., it appears that the phrase “Contracting Parties Choice” should be changed to “contracting party’s choice.” This comment also applies to Appendix 2, Section A. II. N. 11.; Appendix 3, Section A. II. N. 11; and Appendix 4, Section A. II. N. 11.

m. In Appendix 1, Section B. IV. new A. 6., items a. and b. should be capitalized.

n. In Appendix 1, Section B. IV. new C. new 1. c., the subsequent items are shown as “1. Split” and “2. Single.” To be consistent with other provisions, these could be shown as “(1) Split” and “(2) Single.” (See, e.g., Appendix 1, Section B. IV. new C. new 2. a.) However, it is also noted that in Appendix 2, Section B. IV. new 6. a. and d. and in Appendix 4, Section B. IV. E. 8. d., a single open parenthesis is used. The appendices should use a consistent format for numbering these items.

o. In Appendix 1, Section B. V. E. 2., the term “Uninsured motorist” is used twice. The first use, which is not underscored, should be deleted.

p. In Appendix 2, Section B. IV. new A. new 8., the word “principal” should be changed to “principle.”

q. In Appendix 2, Section B. IV. new B. new 15., the words “affirmative” and “promissory” should be capitalized. Also, it appears that it would be more appropriate to include new 15., 16. and 17. as subdivisions under new 14.

r. In Appendix 2, Section B. IV. new C. new 6. a. 5), the phrase “Business owners Policy” is not identified as item 6). It appears that it should have been.

s. In Appendix 4, Section A. III. A., the comma should be deleted.

t. In Appendix 4, Section B. IV., there are two items labeled B.: a newly created item B. entitled, “Types of Policies” and an existing item B. entitled, “Policy provisions, clauses, and riders” which was not renumbered. This inconsistency should be eliminated.

u. In Appendix 4, Section B. IV. C. 1. a. and b., the word “primary” should be capitalized.

v. In Appendix 4, Section B. V. B., there are two items labeled I. This inconsistency should be eliminated.